In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.21851-M of 2007

....

Date of decision:5.4.2007

Sahid Ali

... Petitioner

v.

State of Haryana and others

... Respondents

....

Present: Mr. Narinder Singh, Advocate for the petitioner.

.....

S.S. Saron, J.

The petitioner by way of the present petition under Section 482 Cr.P.C. seeks a direction to the respondents to arrest the accused persons in case FIR No.124 dated 8.6.2006 registered at Police Station Chhainsa, District Faridabad for the offences under Sections 420, 467, 468, 471, 120-B, 506 and 34 IPC.

Learned counsel for the petitioner has submitted that despite the serious allegations against the accused and even the Police finding them to be true, however, has not arrested the accused persons. It is submitted that challan has not been presented for the offence under Section 419 IPC which is also made out. It is stated that while filing the challan in terms of Section 173 Cr.P.C. it was simply stated that the other accused in order to avoid their arrest have gone underground and action would be taken against them after their arrest. It is further stated that challan was presented on

5.10.2006 and the Police has not done anything to arrest the remaining 26 accused. They have not filed any application to get them declared as proclaimed offenders. The petitioner has also moved an application to the Director General of Police, Haryana and other authorities stating that the Police has arrested only two accused persons and has not made any effort to arrest all the accused persons. It is also stated that the accused persons Ramesh, Kishan and Varinder etc. were pressurizing the petitioner to accept Rs.8 Lacs and compromise the matter failing which they were issuing threats to eliminate the petitioner.

After hearing learned counsel for the petitioner and perusing the record, it may be noticed that the grievance of the petitioner is that complete and effective investigation is not being carried out in the case. It is submitted that most of the accused have not been arrested and the petitioner himself has been pressurized to compromise the case. Besides, challan has not been presented for the offence under Section 419 IPC. In this respect, it is appropriate to note that the field of investigation is the domain of the Police and this Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. is normally not to interfere with the investigation. In State of Haryana v. Ch. Bhajan Lal, A.I.R. 1992 S.C. 604 it was held as follows:-

> "The investigation of a cognizable offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of

> the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorized to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redressal of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of `Divine Power' which no authority on earth can enjoy".

A perusal of the above shows that the Court though is not normally to interfere in the investigating process so long as the investigation with respect to cognizable offence is carried out in compliance with the

provisions falling under Chapter-XII of the Code. However, the Illaqa Magistrate is kept in the picture at all stages even though he is not authorized to interfere in the actual investigation but if a Police Officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers the Court on being approached by the aggrieved person for the redress of his grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for. Therefore, the petitioner has an alternative remedy of approaching the trial Magistrate where challan has been filed in the first instance setting out his grievances as have been made in the present petition. Therefore, the petitioner may approach the Illaqa Magistrate in the first instance. As the petitioner is having an alternative remedy it would not warrant that this Court should interfere at this stage in exercise its inherent jurisdiction under Section 482 Cr.P.C.

In the light of the above observations, the present petition is dismissed being premature.

April 5, 2007. **(S.S. Saron)**
Judge

hsp